



DEPARTMENT OF VETERANS AFFAIRS
Washington DC 20420

December 4, 2018

In Reply Refer To: 001B
FOIA Request: 18-11312-F

CJ Ciaramella
MuckRock News
DEPT MR 59217
411A Highland Ave
Somerville, MA 02144-2516
59217-39790871@requests.muckrock.com

Dear CJ Ciaramella:

This is the Initial Agency Decision (IAD) to your Freedom of Information Act (FOIA) request to the Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA) dated and received August 8, 2018. You requested, as you phrase it:

- "any and all communications containing 'propublica,' 'Arnsdorf,' 'perlmutter,' 'moskowitz,' 'sherman,' or 'mar-a-lago' between Aug 1, 2018 and Aug. 8, 2018 to or from the following officials: VA Secretary Robert Wilkie, General Counsel James Byrne, Secretary for Public and Intergovernmental Affairs John Ulyot; and Press Secretary Curt Cashour"; and,
- "any and all records to or from the above-mentioned officials that include the email domain 'who.eop.gov' between Aug. 1, 2018 and Aug. 8, 2018."

The OSVA FOIA office is releasing only communications within the email boxes of VA Secretary Robert Wilkie. The VA OPIA FOIA office is processing your FOIA request **18-11313-F** for communications within the email boxes of John Ulyot and Curt Cashour. The VA OGC FOIA office is processing your FOIA request **18-11320-F** for communications within the email box of James Byrne.

IAD and November 30, 2018, Reasonable Search

On November 30, 2018, the OSVA FOIA Officer searched through VA Secretary Robert Wilkie's email boxes from August 1, 2018, to August 8, 2018 (the dates you specified). The OSVA FOIA Officer used the search terms you provided: "propublica," "Arnsdorf," "perlmutter," "moskowitz," "sherman," and "mar-a-lago." This search yielded three hundred forty-five (345) pages.

After reviewing the three hundred forty-five (345) pages, the OSVA FOIA Officer redacts some information with FOIA Exemptions 5 and 6. 5 U.S.C. § 552(b)(5) exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The government is entitled to redact confidential government information given "the sensitivity of the commercial secrets involved, and the harm that would be inflicted upon the Government by premature disclosure." Federal Open Market Committee v. Merrill, 443 U.S. 340, 363 (1979). Redacted information includes VA electronic mail server code usernames. The release of this information would expose the VA, its employees, and its contractors to potential hacking and information technology security liabilities and risks. Releasing even a single VA username reveals the pattern to ascertain VA usernames that VA employees use to log into VA Systems of Records; releasing VA usernames exposes the VA, its employees, and its contractors to potential hacking and information technology security liabilities and risks.

5 U.S.C. § 552(b)(6) exempts from required disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." FOIA Exemption 6 permits VA to withhold a document or information within a document if disclosure of the information, either by itself or in conjunction with other information available to either the public or the FOIA requester, would result in an unwarranted invasion of an individual's personal privacy without contributing significantly to the public's understanding of the activities of the federal government. Specifically, the information being withheld, as indicated on the attached documents, under FOIA Exemption 6, consists of names, identities, email addresses, VA usernames, phone numbers, and cellular numbers of federal employees; we however release the names of VA Senior Executives. Federal employees retain a significant privacy interest under certain circumstances, such as in instances where the release of their information could represent a threat to their well-being, harassment, or their ability to function within their sphere of employment. The federal employees whose information is at issue have a substantial privacy interest in their personal information. In weighing the private versus the public interest, except names of VA Senior Executives, we find that there is no public interest in knowing the names, identities, email addresses, VA usernames, phone numbers, and cellular numbers of federal employees. The coverage of FOIA Exemption 6 is absolute unless the FOIA requester can demonstrate a countervailing public interest in the requested information by demonstrating that the FOIA requester is in a position to provide the requested information to members of the general public and that the information requested contributes significantly to the public's understanding of the activities of the Federal government. Additionally, the requester must demonstrate how the public's need to understand the information significantly outweighs the privacy interest of the person to whom the information pertains. Upon consideration of the records, I have not been able to identify a countervailing public interest of sufficient magnitude to outweigh the privacy interest of the individuals whose names are redacted. The protected information has been redacted and (b)(6) inserted. Releasing even a single VA username reveals the pattern to ascertain VA usernames that VA employees use to log into VA Systems of Records; releasing VA usernames exposes the VA, its employees, and its contractors to potential hacking and information technology security liabilities and risks. "Withholding a telephone number or e-mail address, alone, is not sufficient to protect that [privacy] interest; alternate means of contacting and harassing these employees would be readily discoverable on the Internet if this court ordered their names disclosed." Long v. Immigration & Customs Enf't, 2017 U.S. Dist. LEXIS 160719 (D.C. Cir. 2017).

FOIA Mediation

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. Under the provisions of the FOIA Improvement Act of 2016, the following contact information is provided to assist FOIA requesters in resolving disputes:

VA Central Office FOIA Public Liaison:

Name: John Buck

Email Address: vacofoiaservice@va.gov

Office of Government Information Services (OGIS)

Email Address: ogis@nara.gov

Fax: 202-741-5769

Mailing address:

National Archives and Records Administration

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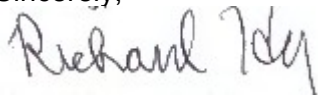
FOIA Appeal

This concludes OSVA's IAD response to request **18-11312-F**. Please be advised that should you desire to do so, you may appeal the determination made in this response to:

Office of General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

If you should choose to file an appeal, please include a copy of this letter with your written appeal and clearly indicate the basis for your disagreement with the determination set forth in this response. Please be advised that in accordance with VA's implementing FOIA regulations at 38 C.F.R. § 1.559, your appeal must be postmarked no later than ninety (90) days of the date of this letter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard Ha".

Richard Ha, JD, CIPP/G
OSVA FOIA Officer

Attachment – redacted three hundred forty-five (345) pages